

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. **Claims 1-7, 10-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (EP 0 285 409 B1) in view of Lundquist (US # 3,338,723).
4. **Regarding claim 1**, Baker discloses a packaged pet food product comprising:
  - a. two or more slices of meat or meat analogue material in a sauce or gel, wherein said slices are arranged in a rigid or semi-rigid container (page 4, lines 1-25).

5. Baker fails to disclose that the meat slices are arranged in a stacked or shingled relationship side-by-side that is apparent upon opening the container.

6. However, Lundquist discloses a packaged meat product wherein meat slices are arranged in a shingled relationship that is apparent upon opening the container (column 1, lines 15-25).

7. **Regarding claim 2**, Baker further discloses that the slices are relatively thin slices of substantially consistent appearance and surface size (p. 6, lines 20-25, p. 7, lines 5-12), but fails to disclose that the slices are arranged like shingles thereby to display a carefully stacked food appearance.

8. However, Lundquist discloses arranging meat slices in a shingled manner (column 1, lines 15-25).

9. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the product disclosed by Baker with the shingled slice arrangement disclosed by Lundquist because arranging the slices in a shingled manner allows the package to present a neat and attractive appearance (Lundquist, column 1, lines 21-23).

10. **Regarding claims 3 and 4**, Baker discloses using meat slices with dimensions of 24.5 mm x 12.4 mm x 5.5 mm (44% of other measurements).

11. This thickness is substantially close to that of the instant claims that one of ordinary skill in the art would have expected compositions that are in such close proportions to those in the prior art to be prima facie obvious, and to have the same properties. *Titanium Metals Corp.*, 227 USPQ 773 (CAFC 1985).

12. Alternatively, it would have been obvious for one of ordinary skill in the art at the time of the invention to adjust the thickness for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. **Regarding claim 5**, Baker discloses that the meat slices make up 100% by mass of the solid material in the package (p. 7, Table 1).

14. **Regarding claim 6**, it would have been obvious for one of ordinary skill in the art at the time of the invention to adjust the mass of meat slices in relation to solid material for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

15. **Regarding claim 7**, Baker discloses producing a meat loaf, slicing it, and putting it in a container (above rejections, p. 7 table 1). Baker does not disclose arranging the slices in a side-by-side arrangement, however, as noted in the above rejections,

Lundquist discloses arranging sliced meat products in a shingled, side-by-side manner (column 1, lines 15-25).

16. **Regarding claim 10**, Baker in view of Lundquist discloses the pet food of claim 1.

17. Baker discloses that the pet food contains a plurality of meat analogue slices (p. 7, lines 5-10), but fails to disclose the arrangement of said slices.

18. However, Lundquist discloses arranging meat slices in a stack of partially overlapping individual slices, wherein the stack of slices is arranged in the container such that at least the majority of each of the individual slices is visible upon opening the container (column 1, lines 15-25).

19. **Regarding claims 11 and 12**, although Baker in view of Lundquist does not explicitly teach the number of slices to be included in the pet food product, it would have been obvious for one of ordinary skill in the art at the time of the invention to adjust the number of meat slices for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

20. **Regarding claim 13**, Baker in view of Lundquist discloses the pet food product of claim 1.

21. Lundquist further discloses using a tray as the container, but does not disclose the content capacity thereof (figure 1).

22. It would have been obvious for one of ordinary skill in the art at the time of the invention to adjust the content capacity of the tray for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

23. Baker discloses the claimed invention except for the dimensions of the meat slices in the instant claim (Baker discloses slice dimensions of 24.5x10.7x5.5 mm). It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the size of the meat slices, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *Gardner vs. TEC Systems, Inc.* 725 F. 2d 1338, 220 USPQ 777 (Fed Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

24. **Regarding claim 14**, Baker discloses a method of manufacturing packaged pet food products comprising the steps of;

- b. Providing two or more slices of meat or meat analogue material in a sauce or gel; and
- c. Providing a container (see above rejections).

25. Baker fails to disclose arranging the meat or meat analogue in said container in a side-by-side stacked or shingled arrangement that is visually noticeable upon opening the container.

26. However, Lundquist discloses a method for arranging discretely apportioned meat slices in such a manner (see above rejections).

27. **Regarding claim 15**, Baker disclose that the container used is a can (p. 7 lines 5-10).

28. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Lundquist as applied to claim 1 above, and further in view of Kuchler (US #5,101,702 A).

29. Baker in view of Lundquist discloses the pet food of claim 1, but fails to disclose incorporating slices of different types of meat that are interleaved and stacked or shingled in alternative order.

30. However, Kuchler discloses stacks of foodstuffs comprising 2 sliced meats stacked in alternative order (Figures 3 and 4, column 1 lines 42-44, column 2, lines 29-45).

31. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the pet food of Baker in view of Lundquist with the interleaved

stacking of multiple types of meat disclosed by Kuchler because interleaved slices of meat create a desirable taste blend (column 1 lines 50-55).

32. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Lundquist as applied to claim 1 above in further view of Wynn (Alternative Feeding Practices).

33. Baker in view of Lundquist discloses the pet food of claim 1, but fails to disclose including vegetables.

34. However, Wynn discloses that pet diets should be supplemented with both meats and vegetables (Home Prepared Diets).

35. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the pet food of Baker in view of Lundquist with the addition of vegetables as disclosed by Wynn to provide the pet with phytochemicals and other vital nutrients (Home Prepared Diets).

36. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Lundquist as applied to claim 14 above in further view of Germain (US #6,852,958 B2).

37. Baker in view of Lundquist discloses the method of claim 14, but fails to disclose that the container is one with a removable, peel-off lid.

38. However, Germain discloses a container for food products that is a tray with a removable, peel-off lid (abstract, column 4, lines 38-50).

39. It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of Baker in view of Lundquist with the container disclosed by Germain, because the container of Germain is suitable for use in sterilization and pasteurization processes used in the food industry (column 1, lines 7-15).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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